Rep. 783 and note). And for the importance of the buyer's notifying the seller that the chattel is claimed by a third person, and requiring him to defend the action, see *Burt v. Dewey* 40 N. Y. 283 (100 Am. Dec. 482), citing *Sweetman v. Prince*, 26 N. Y. 224.

WHAT IS SUCH A PROMISE "TO ANSWER FOR THE DEBT OF ANOTHER" AS IS REQUIRED TO BE IN WRITING SIGNED BY SEC. 4 OF THE STATUTE OF FRAUDS.—(See Code Va., sec. 2840.) Several requisites must concur:

(1) The promise must be made to the *creditor*. A promise to the debtor to pay his debt for him is not within the statute; and, if on sufficient consideration, is binding though made verbally. *Eastwood v. Kenyon*, 11 Ad. & E. 438. And the reason why a promise to save another harmless from the consequences of his acts (Indemnity, Anson on Contracts, p. 59), does not require to be in writing is that such promise is made to him who is to *become liable* (the *quasi* debtor), and not to him to whom the liability would be incurred (the *quasi* creditor). In the latter case writing is required.

(2) The promise must be to pay a debt as *guarantor*, for which debt another person is *primarily* liable. If A goes into B's shop, and says, "Let C. have goods, and if he does not pay you, I will," this is a collateral promise or guaranty, and unless in writing and signed by A is unenforceable; but it is otherwise when A says to B, "Let C have goods on my account," or "Let C have goods and charge me with them." Thus in *Hendricks v. Robinson*, 56 Miss. 694 (s. c. 31 Am. Rep. 382), the promise of Dulaney to pay Robinson for the goods supplied by him to Hendricks did not require to be in writing, as Hendricks was never *liable at all*, the credit being given entirely and solely to Dulaney, though the goods were delivered by his order to Hendricks. And the subsequent promise by Hendricks to Robinson to pay for the goods *did* require to be in writing; for it was to answer for the *debt of another* (that of Dulaney); and besides it was void for lack of consideration, the only consideration being *moral*, if indeed there was even a moral obligation on Hendricks to pay under the circumstances.

(3) The principal liability, while it may be prospective, must be real, *i. e.*, it must be incurred at *some time*. Thus in *Mountstephen v. Lakeman*, L. R. 7 H. L. 17, a contractor (the plaintiff) offered to make a side-drain into the main sewer if the defendant or the town would be responsible. The defendant said: "Go on and do the work, and I will see you paid." The town had never authorized the construction of the side-drain, and it refused to assume the liability. It was held that the defendant was liable, without writing, as principal debtor, the words, "I will see you paid," imposing a primary liability on himself. But it was said that even if the defendant's promise had been collateral, *e. g.*, "*If the town won't pay you*, I will," still no writing would have been required. The town was never responsible, but only himself. So that his promise could not be to answer for the *debt of another* within the meaning of the Statute of Frauds.

(4) The liability of the original debtor *must continue*. Thus in *Goodman v. Chase*, 1 B. & Ald. 297, the defendant promised the creditor to pay the debt if the creditor would release the debtor from prison, where he was confined for the debt under a writ of *Ca. Sa.* (now abolished). The law was that such release of a debtor operated *ipso facto* to discharge the debtor from his debt. Thus the discharge of the debtor extinguished his debt, and left the defendant alone liable,

as principal, and not for the debt of another. So defendant was held liable on his promise without writing.

In addition to the above, it has been held in some cases that where the promise to pay the debt of another arises out of some new and original consideration, it is not within the Statute of Frauds. See Smith on Contracts (7th ed.) 112; *Hopkins v. Richardson*, 9 Gratt. 494; *Wright v. Smith*, 81 Va. 777. For an examination of this doctrine, see Harriman on Contracts, p. 197, where various distinctions are suggested. The doctrine is repudiated in England. And see *Noyes v. Humphries*, 11 Gratt. 636, at p. 645, per Allen, P.

EMBLEMENTS IN VIRGINIA.—When the owner of land dies intestate, and it descends to the heir, a distinction is made between such unsevered vegetable products as are raised annually by cultivation and labor (*fructus industriales*), and such as are the natural products of the ground (*fructus naturales*). The former class, called *emblements*, are considered personalty, and pass to the administrator, while the latter class, those not emblements, are regarded as part of the realty, and go with the land to the heir. Emblements may be defined as the annual results of agricultural labor, *i. e.*, the crops which repay the labor bestowed upon them within the year, and they belong to the administrator, because the personal estate is expended in their production, and should therefore be increased by their value. Accordingly, crops of corn, wheat, and other cereals, potatoes and other root crops, cotton, hemp, flax, etc., are emblements, and go to the administrator; while timber, fruit-trees, fruit, grass, clover, etc., are not emblements, and pass to the heir. (3 Redf. Wills, 150–155; 4 Lead. Cases, Real Prop. 517; Tied. Real Prop., sec. 71, note 4.

When, however, land is devised, the devisee is entitled, at common law, to all unsevered vegetable products thereon; those which are emblements as well as those which are not, the devise of the land importing a gift of all that is affixed to it, no distinction being made between timber, fruit, and grass, on the one hand, and wheat, corn, tobacco, etc., on the other. *West v. Moore*, 8 East, 339; *Bradner v. Faulkner*, 34 N. Y. 347; *Dennet v. Hopkinson*, 63 Me. 350 (18 Am. Rep. 227); 1 Lomax Ex'ors, 410; 3 Redfield, Wills, 154.

As to the right in Virginia of a devisee to the emblements, it was held, in *Shelton v. Shelton*, 1 Wash. (Va. 53), that under the statute then in force a devise of land, where the testator died after March 1, would not pass to the devisee the crops unsevered at the testator's death, unless such *intent* was manifested by the will. But see *Fleming v. Bolling*, 3 Call, 75, 82, explaining *Shelton v. Shelton* as a case under the statute, and admitting the common law to have been otherwise. And see 1 Lom. Ex. 421, as to the effect of the Code of 1849, ch. 139, sec. 2. But however the law may have been formerly, it is believed that now in Virginia a devise of land will carry the emblements to the devisee, unless a contrary intention is expressed in the will. For the Code of 1887, sec. 2806, declares that "in all cases the right to emblements shall be as at common law;" and by the common law a devise of land to A gave him the emblements. And see *Bradner v. Faulkner*, 34 N. Y. 347, which is *e contra* to *Shelton v. Shelton* on the construction of a very similar statute.

As to the right of *tenant for life* to emblements, see 2 Bl. Com. (122). When